IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

MFA.No. 1136 of 2001(C)

M.V.(O.P).NO.32/1998 OF M.A.C.T OTTAPPALAM.
.....

APPELLANT/ PETITIONER IN THE O.P. (M.V). NO. 32/98:

RAMACHANDRAN, AGED 45 YEARS, S/O. KRISHNAN NAIR,
ERUMAKKUZHIYIL HOUSE, KADAMBOOR POST,
OTTAPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH.

RESPONDENTS/ RESPONDENTS IN O.P. (MV). NO. 32/98:
----

1. **M. REJI, S/O. SKARIA, MULANTHANATH HOUSE,**
   MALAKKA, THRISSUR (DRIVER OF BUS KL/8/C-225)
   DL. NO. 387/93.B.NO.211/93, VALID UP TO 08/03/99.

2. **C.C. SIMON, CHALAKKAL HOUSE, AYYANTHOLE, THRISSUR,**
   (OWNER OF THE BUS KL 8-/C-225).

3. **THE ORIENTAL INSURANCE CO., LTD.,**
   DIVISIONAL OFFICE, MANUSWARI BUILDING,
   3RD FLOOR, M.G. ROAD, THRISSUR,
   (INSURER OF BUS KL 8/C-225),
   POLICY NO. 3330/97, VALID UPTO 15/03/97
   TO 14/03/98..

`

BY ADV. SRI.MATHEWS JACOB.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

M.F.A.No.1136 of 2001-C

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 13th day of December, 2007

J U D G M E N T

J.B.Koshy, J.

The appellant claimant suffered personal injuries in a motor accident on 13/09/1997. He claimed compensation of Rs.4,00,000/- contending that the accident occurred due to the negligent driving of the bus by the first respondent and the bus was owned by the second respondent and insured by the third respondent Insurance Company. Even though, the aspect of negligence and coverage of insurance as contended by the claimant was accepted, only Rs.95,161/- was awarded as compensation. The only dispute is with regard to the quantum of compensation.

2. The appellant was aged 45 years at the time of accident. The 13 is the multiplier for an accident victim in the age group 45 to 50 under Schedule 2. If that be so, taking guidelines from the second schedule, we fix 13 as the apt multiplier.

3. As far as injuries and disabilities are concerned Ext.A7 is the disability certificate and Ext.A8 is the discharge summary. Ext.A7 disability certificate reads as follows:

> "This is to certify that I have today examined Mr.P.Ramachandran, S/o.Krishnankutty Nair, Erumakkuzhiyil House, Kadamboor (P.O.), who was earlier treated by me for injuries sustained in an alleged road traffic accident on 13/09/1997. He was examined today for assessment of permanent physical impairment sustained by him due to the said injuries. He is found to have sustained amputation through proximal phalanx of middle finger (Right side); has a non functional deformed ring finger (R) interfering with hand function 2nd partial restriction of supination in (R) forearm. On account of these affections on his dominant extremity, he is considered to have contracted permanent physical impairment to the extent of 15% (fifteen percent).

Considering the fracture of both bone of forearm (right hand) and also considering the crush amputation of ring and middle fingers (R), crush injury to distal phalanx and proximal phalanx of little finger (R), 15% disability was assessed. It is contended that he

was running a hotel at the time of accident and he was earning Rs.6,000/- per month. He produced Ext.A9 municipal certificate as well as Ext.A10 series of tax receipts to show that he was running a hotel. The Motor Accident Tribunal has taken only Rs.1,500/- as the monthly income. Even though he claimed Rs.6,000/- as monthly income from the business, the account books were not produced. We are of the opinion that since he was running a hotel and that he was the sole bread winner of his family, at least Rs.3,000/- ought to have been taken for the purpose of assessing compensation. In that case, the compensation for total disability and loss of earning power will be Rs.70,200/- (Rs.3000 x 12 x $^{15}/_{100}$ x 13). The Tribunal has awarded a lump sum amount of Rs.20,000/- without any scientific basis. So the claimant will be entitled for Rs.50,200/- more for disability and loss of earning power. We are of the opinion that no enhancement is necessary in the compensation awarded under other heads.

The above additional amount of Rs.50,200/- should be deposited by the third respondent Insurance Company over and above the amount awarded by the Tribunal with 7.5% interest

from the date of application for deposit. On deposit of the same, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

(J.B.KOSHY, J UDGE)

(K.HEMA, J UDGE

ms

J.B.KOSHY & K.HEMA, JJ.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

M.F.A.No.1136 of 2001-C

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

13th December, 2007